S.B. CIVIL WRIT PETITION NO.751/2005

Bhera @ Devilal vs. Smt. Moti and another.

Date : 7.2.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Rajesh Panwar, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 1.12.2004 by which the Family Court, Udaipur dismissed the petitioner's application filed under Order 9 Rule 13 C.P.C.

It appears from the facts of the case that proceedings under Section 125 Cr.P.C. were initiated and the notice was served upon the petitioner. He appeared in the Court once and thereafter, when he did not appear, the Family Court passed an order to proceed ex-parte against the petitioner on 12.12.2001. The petitioner without filing any application for condonation of delay and without disclosing when and how he came to know about the orders of the Court below, submitted an application for setting aside the ex-parte order under Order 9 Rule 13 C.P.C. (in proceedings under Cr.P.C. ?). The trial court rejected the application vide impugned order dated 1.12.2004.

It is clear from the facts mentioned in the application and which are not in dispute that the order was passed against the petitioner on 16.6.2001

and the petitioner did not submit any application for condonation of delay though he filed the application after more than ten months.

In view of the above, the court below has not committed any error of law or fact or of jurisdiction so as to call for interference in the impugned order under Article 227 of the Constitution of India.

Accordingly, this writ petition, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya